



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ANDREW M. CUOMO
ATTORNEY GENERAL

DIVISION OF ECONOMIC JUSTICE
ANTITRUST BUREAU

July 16, 2010

VIA ELECTRONIC FILING

Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

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Office of Proceedings

JUL 16 2010

Part of
Public Record

Re: MC-F-21035, Stagecoach Group plc and Coach USA, Inc. et al. -
Acquisition of Control - Twin America LLC

Dear Ms. Brown:

On June 28, 2010, the National Labor Relations Board ("NLRB") issued a decision on whether the employee bargaining units working in connection with the Gray Line and CitySights brand buses had merged so as to entitle TWU to an election to represent all of the tour guides/ticket agents ("Decision"). As part of its decision, the NLRB found that the Twin America joint venture "has not resulted in the creation of a new operation...". The decision confirms what the New York Attorney General has maintained from the beginning, that Twin America is not a merger or a fully integrated joint venture as the Applicants claim.

Contrary to the verified statements and claims asserted by the Applicants to the Surface Transportation Board ("STB"), the NLRB found that "there has not been any significant physical consolidation of operations" by the Applicants.

Here are some of the findings by the NLRB in its decision that belie the assertions posited by the Applicants to the STB:

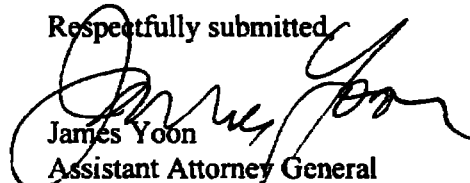
1. Twin America "presented the verified statement of Princeton Professor Robert D. Willig, which was submitted to the Surface Transportation Board, stating that Twin America is also consolidating information technology, sales and marketing functions, "which will result in the

trimming of the workforce..." there is no evidence that such consolidation has taken place or that the workforce has been reduced." (Dec. pg. 6, footnote 9).

2. "Gray Line and City Sights have maintained their separate offices and bus garages since joining forces." (Decision p. 7, ¶ 1). "Although Zev Marmurstein, the Employer's President and Chief Executive Officer, asserted in his verified statement to the Surface Transportation Board that buses were being warehoused at common locations, Mr. Murphy's testimony contradicted this statement. I credit Mr. Murphy's live testimony, which was subject to cross-examination." (Decision p. 7, footnote 10).
3. "This practice...called "cross-ticketing", however that term is rather misleading, as the Gray Line ticket sellers and the City Sights ticket agents may only sell tickets for their company's own tours." (Decision p. 7, footnote 11).
4. "Zev Marmurstein stated in his verified statement that "having a single dispatcher allows Twin America to better coordinate the location of its buses and reduce traffic congestion." There was not testimony at the hearing to explain this statement or to explain the role of the dispatcher referred to by Mr. Marmurstein." (Decision p. 9, footnote 14).
5. "[T]he evidence here clearly establishes that since the formation of Twin America, Gray Line and City Sights have maintained separate, distinct operations." (Decision p. 10, ¶ 3).
6. "Although the respective operations have a common overarching management, there is no evidence that this additional oversight has resulted in a further integration of the Gray Line and City Sights units." (Decision p. 11, ¶ 2). "There has not been any significant physical consolidation of operations." (Id. at ¶ 4).
7. "Although the buses were contributed to the formation of Twin America, those buses are being used separately and independently by each company. They are also being housed separately, as Gray Line and City Sights have retained their separate bus depots. Other factors also show that physical consolidation has not taken place." (Decision pgs. 11-12)
8. "While some aspects of the operations have combined, such as the accounting department and call center, those functions are ancillary and removed from the tour operations." (Decision p. 12, ¶ 1).

Once again we strongly urge the STB to deny the Application for all the reasons set forth in our filings with the STB.

Respectfully submitted,



James Yoon
Assistant Attorney General
Antitrust Bureau

cc: David H. Coburn, Esq.
Karen Fleming
Mark A. Berman, Esq.

**R.D. # 06-10
New York City, N.Y.**

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22**

TWIN AMERICA, LLC

Employer

and

**LOCAL 225, TRANSPORT WORKERS
UNION, AFL-CIO**

CASE 22-RC-13115

Petitioner

and

**LOCAL 1212, UNITED SERVICE WORKERS
UNION, IUJAT**

Intervenor

DECISION AND ORDER

I. INTRODUCTION

The Petitioner filed a petition seeking to represent a unit of all full-time and regular part-time lecturers, tour guides, outdoor sales agents and ticket agents employed by the Employer but excluding all other employees. The Employer and the Intervenor both assert that the petition should be dismissed because it is barred by existing collective bargaining agreements with the Employer's predecessors. The Petitioner asserts that

there is no contract bar because the companies have merged, establishing a question concerning representation.

I find, for the reasons described below, that the existing contracts bar an election in this matter and therefore, the petition must be dismissed.

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding,¹ I find:

1. The hearing officer's rulings are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.²
3. The record reflects, and I find, that Local 225, Transport Workers Union, AFL-CIO, ("the Petitioner"), represents certain employees of GL Bus Lines, Inc. ("GL Bus") and is a labor organization within the meaning of Section 2(5) of the Act. The record also reflects, and I find, that United Service Workers Union, IUJAT, Local 1212 (the "Intervenor") represents certain employees of JAD Transportation, Inc. ("JAD") and is a labor organization within the meaning of Section 2(5) of the Act.³
4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act, for the following reasons:

¹ Briefs filed by the Petitioner, the Intervenor, the Employer, predecessor Employer GL Bus Lines, Inc., and predecessor Employer JAD Transportation, Inc. have been duly considered. No other briefs were filed.

² The record reveals that Twin America is a Delaware Limited Liability Company engaged in the provision of drivers, ticket agents and tour guides to Gray Line New York Sightseeing Tour Services and City Sights NY Sight Seeing Tour Services from its New York, NY facilities.

³ The parties stipulated, and I find, that the Petitioner and the Intervenor are labor organizations within the meaning of Section 2(5) of the Act.

II. FACTS

Twin America, LLC is a sight-seeing business that, *inter alia*, provides double-decker sight-seeing tours in New York City. Twin America was formed on March 17, 2009 as a joint venture between two established entities, International Bus Service, Inc. ("IBS") and City Sights Twin, LLC⁴ ("City Sights"). Prior to the March 17, 2009 joint venture, City Sights operated the City Sights double decker tour bus operation, while IBS was one of several companies engaged in the operation of Gray Line New York Tours ("Gray Line").⁵ It is undisputed that prior to the establishment of the joint venture, City Sights and Gray Line operated as independent and unrelated New York City tour bus operations.

In forming Twin America, both IBS and City Sights contributed significant equity, including their bus fleets. Pursuant to the joint venture agreement, IBS and City Sights equally share control of Twin America, while IBS receives 60% of the economic interests and City Sights receives 40%. Twin America is managed by a Board of Managers, which is comprised of six individuals, three from Gray Line and three from City Sights.

The record reveals that prior to establishment of the joint venture, both City Sights and Gray Line had become parties to separate collective-bargaining agreements for units of employees. With respect to the Gray Line operation, the Petitioner and GL Bus are parties to a collective-bargaining agreement covering a unit of Gray Line's "drivers, lecturers, outdoor sales agents and NYU drivers in all of the Employer's

⁴ City Sights Twin, LLC is owned by City Sights, LLC and was created for the purpose of the joint venture.

⁵ IBS is an operating subsidiary of Coach USA. Prior to the joint venture, IBS owned the physical assets of Gray Line and employed the drivers of Gray Line tour buses. Another Coach subsidiary, GL Bus Lines, Inc., employed the tour guides and ticket agents.

garages.” This agreement is effective from November 15, 2008 through November 14, 2011.⁶ With respect to the City Sights operation, the Intervenor and City Sights are parties to a collective-bargaining agreement covering a unit of City Sights’ full-time and regular part-time drivers, ticket agents and tour guides.⁷ The Intervenor has represented this unit since about May 20, 2005, and the current collective-bargaining agreement is effective from May 20, 2008 through May 19, 2011.

The Petitioner seeks to represent a combined unit of Twin America’s lecturers, tour guides, outdoor sales agents and ticket agents, but excluding the drivers and all other employees. At the hearing, the parties stipulated that the existing collective-bargaining units are presumptively appropriate and that the current contracts serve as a bar to an election, unless there was a sufficient merger of operations between Gray Line and City Sights.

Gray Line and City Sights both offer numerous types of double-decker bus tours throughout New York City. Each company maintains its own readily-identifiable and clearly distinct tour buses. Both companies stop at most of the same locations, and their bus tours are not identical, but are substantially similar. Each company’s pick-up sites are often adjacent to each other at each stop.

Since Twin America was formed, Gray Line and City Sights have maintained their separate public identities, as detailed above. There is no evidence that the tour

⁶ Although the unit description includes drivers, the record reveals that since at least February 1, 2005, the Gray Line drivers have been represented by International Brotherhood of Teamsters, Local 966 under a separate collective-bargaining agreement with IBS for a unit of “all full-time and part time drivers and maintenance employees” employed by IBS. This agreement is effective from February 1, 2008 through January 11, 2011. Neither IBS nor International Brotherhood of Teamsters, Local 966 participated at the hearing.

⁷ The parties to this collective-bargaining agreement are the Intervenor and JAD Transportation, Inc. At the hearing, the parties stipulated that JAD is a New York corporation engaged in the provision of providing drivers, ticket agents and tour guides to City Sights.

routes or products offered by each company have changed, except that Gray Line has eliminated the Heritage Tour, the Staten Island Tour and the Showbiz Tour, and City Sights eliminated the multi-language tour. Although there is some evidence that the number of Gray Lines buses was reduced as a result of the joint venture, there is no evidence that this reduction in the fleet has affected the number of tours available or the hours and wages of any employees. Likewise, the pick-up and drop-off stops for each company are unchanged. In addition, employees of Gray Line and City Sights each wear their distinct uniforms, which are labeled with each company's insignia.

The record reveals that Gray Line's tour guides and City Sight's lecturers have similar duties: they conduct tours on the double-decker buses. Likewise, the outdoor sales agents at Gray Line and the ticket agents at City Sights are both outdoor ticket vendors for the tours and they are stationed at the various pick-up sights. These duties did not change after the formation of the joint venture.

James Murphy, Twin America's Vice President of Operations, oversees the operations of both Gray Line and City Sights. Mr. Murphy now reports to Mark Marmurstein, the President of Twin America. Prior to the joint venture, Mr. Murphy was the Vice President and General Manager of Gray Line. Janet West is the owner of JAD Transportation; she does not report to Mr. Murphy. Six Gray Line managers and four City Sights managers now report to Mr. Murphy, whereas prior to the joint venture, only the Gray Line managers reported to him. Gray Line and City Sights each have an operations manager, a tour guide manager, a street sales manager, and a human resources

manager.⁸ The job duties for these positions are similar, if not identical, for each company, and those duties did not change after the formation of the joint venture.⁹ In the past, each company had its own safety manager but, since the inception of Twin America, the companies have shared a single safety manager.

The Gray Line and City Sights accounting departments and call centers have been fully integrated. The companies have jointly purchased fuel, spare parts and insurance for the vehicles, resulting in lower overall costs. The verified statements presented by the Petitioner also document that further integration is anticipated in the future.

Since the merger, the collective-bargaining agreements have continued to govern the terms and conditions of employment of the bargaining-unit employees covered by each agreement. Assignment of work, discipline and grievance-handling are all conducted according to the separate collective-bargaining agreements. In addition, bargaining-unit members have continued to be compensated according to the guidelines that are set forth in those agreements.

Gray Line and City Sights continue to conduct their own hiring. Since the joint venture, Gray Line has not changed its tour guide and ticket seller application forms. It has also maintained separate company policies, such as its tips policy, sexual harassment policy, and workplace violence policy.

⁸ Gray Line has two street sales managers and City Sights has just one. Gray Line also has a maintenance manager, who reports to Mr. Murphy. The tour guide manager position was vacant at the time of the hearing and those duties were being fulfilled by the operations manager.

⁹ Although the Petitioner presented the verified statement of Princeton University Professor Robert D. Willig, which was submitted to the Surface Transportation Board, stating that Twin America is also consolidating information technology, sales and marketing functions, which "will result in the trimming of the workforce." "there is no evidence that such consolidation has taken place or that the workforce has been reduced

Gray Line and City Sights have maintained their separate offices and bus garages since joining forces.¹⁰ Employees for each company have continued to report to work at the same locations that they reported to prior to the establishment of the joint venture.

Both Gray Line and City Sights maintain pick-up points at the South Street Seaport and Battery Park. The Brooklyn Tour for each company stops at both of these locations, with the Gray Line tours leaving every half-hour and the City Sights tours leaving every hour. Since January 2010, the companies have been "cross-honoring" each other's tickets for the Brooklyn tours, meaning that a City Sights ticket may be used on a Gray Line Brooklyn tour, and vice versa.¹¹ Therefore, at the South Street Seaport and Battery Park, Gray Line and City Sights passengers stand in a single line for the Brooklyn Tours, and the Gray Line dispatcher loads all passengers onto whichever bus is available, either Gray Line or City Sights. There is no direct evidence that Gray Line or City Sights ticket sellers, ticket agents, tour guides or lecturers have lost hours or compensation as a result of this practice.¹²

Cross-honoring of tickets has also been implemented in other limited circumstances. City Sights offers an inclusive package that includes a multilingual tour. The City Sights multilingual tour is given on a Gray Line motor coach that accommodates both Gray Line and City Sights passengers. Also, since the Gray Line

¹⁰ Although Zev Marmurstein, the Employer's President and Chief Executive Officer, asserted in his verified statement to the Surface Transportation Board that buses were being warehoused at common locations, Mr. Murphy's testimony contradicted this statement. I credit Mr. Murphy's live testimony, which was subject to cross-examination.

¹¹ This practice is also called "cross-ticketing", however that term is rather misleading, as the Gray Line ticket sellers and the City Sights ticket agents may only sell tickets for their company's own tours.

¹² Although James Muessig, a Gray Line lecturer and the Intervenor's recording secretary, testified that Gray Line ticket agents would lose wages due to this practice, his testimony was speculative and did not include any specific examples of lost wages as a result of the "cross-honoring" arrangement.

buses are equipped in compliance with the requirements of the Americans with Disabilities Act and the City Sights buses are not. all City Sights passengers in wheelchairs are allowed to ride Gray Line buses. Finally, starting at 3:00 p.m., customers in lower Manhattan are allowed to board either the Gray Line or City Sights buses regardless of which type of ticket they hold. According to Mr. Murphy, this is allowed at the end of the day because at that time most customers have completed their tours and are using the buses to return to their hotels.

Further, Mr. Murphy may direct City Sights buses to pick up Gray Line passengers at other locations when Gray Line buses were not available, and vice versa, which he did on May 22, 2010, at the pick-up site located at 46th Street and Eighth Avenue. The May 22nd occurrence did not result in any lost wages or hours for Gray Line tour guides or ticket sellers.

At the South Street Seaport, on each day of the week except Monday, both Gray Line and City Sights employ and utilize their own dispatchers, as they did before the creation of Twin America. However, since April 2010, City Sights has not maintained a dispatcher at the South Street Seaport location on Mondays. Therefore, on Mondays, the Gray Line dispatcher also dispatches for the City Sights buses.¹³

Despite the above changes, unit positions and duties have not been combined. City Sights tour guides only conduct tours on City Sights buses, and Gray Line tour guides only conduct tours on Gray Line buses. Likewise, the tickets agents' selling abilities have not changed; they are not able to sell tickets for the other tour line, although they are both able to sell tickets for other third-party vendors. In addition, bus drivers

¹³ Dispatchers are not bargaining-unit members in either the contract between the Petitioner and GL Bus or the contract between the Intervenor and JAD Transportation, Inc. and they are also not included in the bargaining unit that is sought by Petitioner

only drive the buses of their home companies. Further, each company provides separate training for their ticket agents and tour guides.¹⁴

III. LEGAL ANALYSIS

The major objective of the Board's contract bar doctrine is to achieve a reasonable balance between the frequently conflicting aims of industrial stability and freedom of employees' choice. This doctrine is intended to afford the contracting parties and the employees a reasonable period of stability in their relationship without interruption, and at the same time, to afford the employees the opportunity, at reasonable times, to change or eliminate their bargaining representative, if they wish to do so.

However, a question concerning representation will arise, and a contract will not bar a petition, where an employer has sufficiently merged two groups of employees. *Manna Pro Partners, LP*, 304 NLRB 782, 782 (1991); *Martin Marietta*, 270 NLRB 821 (1984); *Boston Gas Co.*, 221 NLRB 628 (1975). The Board has found that such a merger is accomplished where a new operation is created, in which the employees have been combined into a single group and can no longer be considered separate units. *The Denver Publishing Co.*, 238 NLRB 207, 208 (1978); *General Electric Co.*, 170 NLRB 1272, 1273 (1968); *Westinghouse Electric Corp.*, 144 NLRB 455, 458-59 (1963); *General Extrusion Co., Inc.*, 121 NLRB 1165, 1167-68 (1958) ("[A] contract does not bar an election if changes have occurred in the nature as distinguished from the size of the operations between the execution of the contract and the filing of the petition, involving ... a merger of two or more operations resulting in creation of an entirely new operation with major personnel changes...")

¹⁴ Zev Marmurstein stated in his verified statement that "having a single dispatcher allows Twin America to better coordinate the location of its buses and reduce traffic congestion." There was no testimony at the hearing to explain this statement or to explain the role of the dispatcher referred to by Mr. Marmurstein

Factors that lead to such a finding include the physical consolidation of the operation, common management and administration, centralized control of labor relations, and interchange of employees in the new operation. *Martin Marietta Co.*, 270 NLRB 821, 822 (1984). In *Martin Marietta*, the Board found that a question concerning representation existed after the employer consolidated the operations of two adjacent lime quarries. 270 NLRB at 822. Prior to the merger, the employees at each quarry were represented by two separate unions. *Id.* In combining the operations, the employer physically joined the quarries, creating an extensive interchange of employees. *Id.* The employer also created a central administration and combined all labor relations. *Id.* "These changed circumstances have obliterated the previous separate identities of the two units which existed when each group worked for different employers at two distinct facilities." *Id.*

Similar circumstances led to the finding of a question concerning representation in *Boston Gas Co.*, 221 NLRB 628 (1975), where the employer acquired two separate gas companies whose customer service employees were represented by two separate unions. After the acquisition, the employer consolidated the customer inquiry centers at a single location. Although performing similar duties as in the past, after the merger the employees worked side-by-side under common supervision, applying the new employer's customer relations policies as distinguished from those of their previous companies. The Board concluded that these changes had created a new operation.

Unlike the *Martin Marietta* and *Boston Gas* decisions relied upon by the Petitioner in its brief, the evidence here clearly establishes that since the formation of Twin America, Gray Line and City Sights have maintained separate, distinct operations.

Bargaining unit employees' jobs have not changed in any manner since the merger. Their job duties have remained the same, their hours have remained the same, and their terms and conditions of employment have remained the same.

There have been few personnel changes since the inception of Twin America. The job classifications at each operation have been retained and there has been no significant change in the number of employees at each operation. Although the respective operations have a common overarching management, there is no evidence that this additional oversight has resulted in a further integration of the Gray Line and City Sights units. Significantly, both Gray Line and City Sights have maintained their management structure for the tour operations, and daily supervision of the tour operations has not changed.

Labor relations have not been centralized since the creation of the joint venture. The Petitioner asserts that Mr. Murphy's overall responsibility for operations of the Gray Line and City Sights operations is proof of a centralized control of labor relations. Rather, the evidence shows that labor relations continue to be controlled separately by Gray Line and City Sights. Each company has maintained its own Human Resources managers, and each company conducts its own hiring. The collective-bargaining agreements continue to govern the terms and conditions of employment and, since the joint venture, there have been no changes in the administration of these agreements. In fact, grievances continue to be filed and processed according to the procedures set forth in the agreements.

There has not been any significant physical consolidation of operations. The Petitioner argues that the contribution of buses to the joint venture is evidence of such a consolidation. Although the buses were contributed to the formation of Twin America,

those buses are being used separately and independently by each company. They are also being housed separately, as Gray Line and City Sights have retained their separate bus depots. Other factors also show that physical consolidation has not taken place. Both companies have retained their separate offices and employees continue to report to the same work locations. Neither company has changed any of its tour routes, nor have any routes been combined. While some aspects of the operations have combined, such as the accounting department and call center, those functions are ancillary and removed from the tour operations. Certainly, the minor consolidation that has occurred to date is not significant enough to establish a new operation.

Noticeably, the two tour companies are held out to the public as separate entities. The image portrayed to the public is that of two separate tour companies. Buses still maintain their separate Gray Line and City Sights insignia and colors; employees continue to wear their Gray Line and City Sights uniforms, and brochures have not changed.

In addition, there has been no interchange of Gray Line and City Sights tour guides, lecturers, ticket agents and ticket sellers since the formation of Twin America. Even though one company's buses might be used by the other company if necessary, this has been a limited practice thus far, and it has not resulted in the interchange of employees. It also has not resulted in any change in the terms and conditions of employment for bargaining unit employees, such as a loss in wages or hours. Although "cross-honoring" of tickets has occurred in limited circumstances, to date it has resulted in the comingling of customers rather than employees. There is no evidence that this

practice has affected the terms and conditions of any bargaining unit employees for either Gray Line or City Sights.

To serve as a bar to an election, a contract must meet certain basic requirements, which are set forth in the Board's decision in *Appalachian Shale Products Co.*, 121 NLRB 1160 (1958). The contract must be written, signed by the parties, cover substantial terms and conditions of employment for the petitioned-for unit, be of definite duration, and not exceed three years. *Id.* The parties stipulated, and I find, that the contracts between Petitioner and Gray Line and between the Intervenor and City Sights would serve to bar the election sought herein if I fail to find a merger sufficient to create a question concerning representation.

Based on the above and the record as a whole, I find that the joint venture between Gray Line and City Sights to create Twin America has not resulted in the creation of a new operation sufficient to result in a question concerning representation. Consequently, I find that the respective collective-bargaining agreements between the Petitioner and Gray Line and between the Intervenor and City Sights create a bar to an election in this matter.

IV. ORDER


IT IS HEREBY ORDERED that the petition filed in Case 22-RC-13066 herein be, and it hereby is, dismissed.

V. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-

0001. The Board in Washington must receive this request by **July 12, 2010**. The request may be filed electronically through E-Gov on the Agency's website, www.nlrb.gov, but may not be filed by facsimile.¹⁵

Signed at Newark, New Jersey this 28th day of June, 2010.


J. Michael Lightner, Regional Director
National Labor Relations Board
Region 22
20 Washington Place, Fifth Floor
Newark, New Jersey 07102

¹⁵ To file the request for review electronically, go to www.nlrb.gov and select the E-Gov tab. Then click on the E-Filing link on the menu and follow the detailed instructions. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Agency's website, www.nlrb.gov.

CERTIFICATE OF SERVICE

I certify that I have this 8th day of July 2010 served a copy of the foregoing Letter of Applicants by Federal Express on the parties of record listed below and on counsel for Continental Guest Services Corporation:

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